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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

10,160

B-194633

FILE:

DATE: May 14, 1979

ANDERSON SYSTEMS, INC.

MATTER OF:

[Protest of Determination that Proposal Was Technically Unacceptable]

DIGEST:

April 1979 protest of award to competing offeror at higher price is untimely under GAO Bid Protest Procedures, since protest is actually directed at prior rejection of protester's proposal as technically unacceptable in January 1979, and was not filed within 10 working days after protester received notification of reasons for rejection.

ANDERSON SYSTEMS, INC. (ANDERSON), protested to our Office on April 16, 1979, concerning the award of a contract under request for proposals No. 78-33, issued by ACTION. ANDERSON maintains that the three reasons given by ACTION for the rejection of its proposal do not warrant award to another company at a cost about \$264,000 higher per year over a 5-year period. The protester believes that the systems it proposed could have performed the job very well, and that any differences between its proposal and ACTION's requirements could have been resolved if ACTION had made a reasonable effort to negotiate.

AGC 00349 ACTION points out that by letter dated January 15, 1979, it advised ANDERSON of the three technical reasons its proposal would not be further considered. The agency maintains the protest is untimely because it was not filed within 10 working days after the basis for protest was known or should have been known, as required by section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. Part 20 (1978).

ANDERSON responds that it does not regard the notice that its proposal was rejected as unacceptable to have been adequate grounds for protest, but that it does believe the notice of

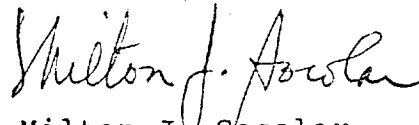
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unacceptability "for trivial reasons" considered together with the subsequent award of the contract at a much higher cost to be "adverse and worthy of protest." ANDERSON points out that it received notice of the award on April 8, 1979.

We considered a very similar case in GTE Sylvania, Incorporated, B-186988, September 7, 1976, 76-2 CPD 225. There an unsuccessful offeror had been notified of the rejection of its proposal on June 9, 1976, and was debriefed on June 29, 1976. In mid-July the unsuccessful offeror learned of an imminent award to another offeror at a price about \$700,000 higher than its proposal and promptly protested. The protester maintained that the imminent award at a higher price was the basis of its protest, and that the 10-working-day period should be computed from the date it learned of the imminent award. Our decision stated in part:

"We disagree. The protest clearly is against the exclusion of the protester's proposal from the competitive range. In this regard, a review of GTE's submissions indicates that the protester's basic position is that NASA acted arbitrarily in finding deficiencies in its 'substantially conforming' proposal and that, had adequate technical discussions been held, the deficiencies would not have existed. Thus, we think it is clear that GTE's protest is actually founded on its objections with regard to proposal evaluation and adequacy of discussions, and not on the fact that award was to be made at a higher price to another offeror. Since GTE was aware of the bases for protest not later than June 29, we are of the view that the 10 day period must have commenced to run from that date. Accordingly, we consider the protest as untimely filed and ineligible for our consideration on the merits."

Where a disappointed offeror receives notice that its proposal is unacceptable along with a statement of the reasons sufficient to put it on notice of its basis for protest, and there is no timely protest to the contracting agency, any protest to our Office must be filed within 10 working days after the offeror's receipt of the notice. Didactic Systems, Inc., B-188070, February 16, 1977, 77-1 CPD 115; Mil-Air, Inc., B-191424, July 20, 1978, 78-2 CPD 55. We believe ANDERSON was sufficiently notified of its grounds for protest when it received ACTION's January 15, 1979, letter listing three specific technical reasons why its proposal was rejected. ANDERSON's protest filed with our Office on April 16, 1979, is accordingly untimely and is dismissed.



Milton J. Socolar
General Counsel